

November 11, 2015

SUBMITTED BY ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Ex Parte Communication, GN Docket No. 12-268, In the
Matter of Expanding the Economic and Innovative Opportunities
of Spectrum Through Incentive Auctions***

Dear Ms. Dortch:

This letter is submitted on behalf of Entravision Communications Corporation, which is a licensee of full-service and Class A broadcast television stations, and in connection with the upcoming FCC Incentive Auction and, in particular, the reverse auction process involving the bandwidth currently allotted to broadcast television licensees.

In connection with the Incentive Auction, recent discussions that Entravision has participated in have focused on whether relinquishment proceeds that a broadcast licensee would receive are eligible to be used in a tax-free manner towards a channel sharing arrangement structured as a like-kind exchange within Section 1031 of the Internal Revenue Code. A critical point has been whether the FCC or the Treasury Department will provide a mechanism for relinquishment proceeds to be transferred directly to a "qualified intermediary" or a "qualified trust" in order to effectuate a like-kind exchange.

The *Public Notice*, Application Procedures for Broadcast Incentive Auction Scheduled to Begin on March 26, 2016, DA 15-1183, released October 15, 2015, contains the following statement indicating that the FCC may be open to having relinquished proceeds paid at the direction of broadcast licensees to third parties, if permissible (at p. 55):

[T]he Commission intends to follow winning reverse auction bidders' payment instructions as set forth on their respective standardized incentive payment forms to the extent permitted by applicable law.

As discussed below, we have found instances of federal law that permits the federal government to make payment to third parties and these statutes and regulations may serve as a basis for the FCC and Treasury to follow in connection with the FCC Incentive Auction process.

The following federal provisions illustrate the authority permitting the federal government to undertake the payment of proceeds to a party other than the claim holder. A copy of the text of these authorities is attached.

A. 31 USC 3727

A federal statute, 31 USC 3727, allows claims against the United States to be assigned subject to the terms of that statute. The statute addresses two situations. One provision (Section 3727(a)) relates to an assignment to any person and a second, more relaxed provision (Section 3727(b)) relates to an assignment to a financing institution. This statute was enacted to protect the federal government, which appears precisely to alleviate the concern that the FCC has expressed with respect to the proceeds of the Incentive Auction.

Either procedure allows for successfully implementing a process by which the relinquishment proceeds could be directed by broadcast licensees to the Qualified Intermediary to effectuate the like-kind exchange. With respect to the financing institution procedure described in Section 3727(b), like-kind exchanges can be structured to have the relinquishment proceeds deposited with a "qualified trust" (commonly a financial institution as the trustee) to hold the proceeds on behalf of the qualified intermediary.

B. 26 CFR 601.506 26 and 31 CFR 240.17

A federal regulation, 26 CFR 601.506, specifically allows the United States Treasury to mail checks to a taxpayer's recognized representative. Another federal regulation, 31 CFR 240.17, allows checks to be endorsed and negotiated by another party at the direction of the taxpayer. The only requirement to implement these procedures is that a power of attorney be filed authorizing such action. Treasury has issued Forms 2848 and 231 as powers of attorney that allow a third party to endorse and deposit checks. We recognize that these regulations deal with the tax administration process and would urge the FCC to consider that they should be applied as well to the auction process. A copy of the relevant regulations and the power of attorney forms are attached.

The above federal statute and regulation would seem to jointly (and possibly separately) implement the requested process of having cash deposited with a Qualified Intermediary.

The attached sample powers of attorney list those permissible representatives who can act as designated representative. One such person is an attorney who is a member in good standing of the bar of the highest court of the jurisdiction listed. Many Qualified Intermediaries have attorneys working as employees of their organizations. It would seem that such attorneys working at Qualified Intermediaries could be designated as persons eligible for the receipt of relinquishment proceeds otherwise payable to the broadcast licensee.

C. Joint Account of Broadcaster and Qualified Intermediary.

Under certain circumstances, the IRS has allowed relinquishment proceeds in the context of a Section 1031 exchange to be deposited into a joint account in the name of the taxpayer and the qualified intermediary. Where accepted, this procedure avoids constructive receipt by the taxpayer by having as one of its conditions that the account requires authorization from the qualified intermediary to transfer the relinquishment proceeds out of the joint account.

This joint account feature has been approved by the IRS in the context of mass asset exchanges by a taxpayer involving multiple exchange of 100 or more properties. Although not specifically addressed by the IRS in the context of a single isolated exchange, practitioners might be

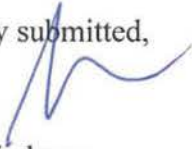
comfortable that the use of a joint account in a mass asset exchange should be equally applicable in a single like kind exchange transfer, like the extinguishment of spectrum rights.

The first two procedures outlined could allow for the FCC to authorize the payment of the relinquishment proceeds directly to a Qualified Intermediary or Qualified Trust. The use of a joint account is another procedure that could also be considered by the FCC to effectuate a like-kind exchange.

As you know, the decision by broadcast licensees as to whether to enter the bid process next month or participate in a channel sharing arrangement with another party pursuant to a like-kind exchange is a very important point. We hope the above information is useful towards the consideration being given by the FCC and assists in a speedy and favorably resolution of the issue for broadcasters.

Should there be any questions in regard hereto, please communicate with the undersigned.

Respectfully submitted,



Barry A. Friedman

cc: Ms. Dorann Bunkin, FCC
Mr. Howard Symons, FCC
Mr. Frank Ferrante

ATTACHMENTS

FINANCIAL MANAGEMENT

31 USCS § 3727

period in latter statute to be triggered by culmination of administrative procedures and adjudication provided for in former statute. *Inter-Coastal Xpress, Inc. v. United States* (2001) 49 Fed Cl 531, *aff'd* (2002, CA-FC) 296 F3d 1357.

C. Judicial Review

18. Generally

Interstate Commerce Commission order resolving issue referred from Court of Claims (now US Claims Court) and determining that certain railroad freight charges had been unreasonably high was judicially reviewable by one-judge federal district court; hence,

Court of Claims should have stayed its proceedings pending disposition of railroad's petition for district court review. *Pennsylvania R. Co. v. United States* (1960) 363 US 202, 4 L Ed 2d 1165, 80 S Ct 1131.

Administrative remedies set forth in 31 USCS § 3726 are not carrier's only means of challenging administrative setoffs; dissatisfied carrier may also file suit under Tucker Act (28 USCS §§ 1346(a)(2) and 1491) to obtain judicial review of setoff decision, regardless of whether claimant has exhausted its administrative remedies by seeking Comptroller General's review. *Dalton v. Sherwood Van Lines* (1995, CA-FC) 50 F3d 1014, 40 CCF ¶ 76762.

§ 3727. Assignments of claims

(a) In this section, "assignment" means—

- (1) a transfer or assignment of any part of a claim against the United States Government or of an interest in the claim; or
- (2) the authorization to receive payment for any part of the claim.

(b) An assignment may be made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued. The assignment shall specify the warrant, must be made freely, and must be attested to by 2 witnesses. The person making the assignment shall acknowledge it before an official who may acknowledge a deed, and the official shall certify the assignment. The certificate shall state that the official completely explained the assignment when it was acknowledged. An assignment under this subsection is valid for any purpose.

(c) Subsection (b) of this section does not apply to an assignment to a financing institution of money due or to become due under a contract providing for payments totaling at least \$1,000 when—

- (1) the contract does not forbid an assignment;
- (2) unless the contract expressly provides otherwise, the assignment—
 - (A) is for the entire amount not already paid;
 - (B) is made to only one party, except that it may be made to a party as agent or trustee for more than one party participating in the financing; and
 - (C) may not be reassigned; and
- (3) the assignee files a written notice of the assignment and a copy of the assignment with the contracting official or the head of the agency, the surety on a bond on the contract, and any disbursing official for the contract.

(d) During a war or national emergency proclaimed by the President or declared by law and ended by proclamation or law, a contract with the Department of Defense, the General Services Administration, the Department of Energy (when carrying out duties and powers formerly carried out by the Atomic Energy Commission), or other agency the President designates may provide, or may be changed without consideration to provide, that a future payment under the contract to an assignee is not subject to reduction or setoff. A payment subsequently due under the contract (even after the war or emergency is ended) shall be paid to the assignee without a reduction or setoff for liability of the assignor—

- (1) to the Government independent of the contract; or
 (2) because of renegotiation, fine, penalty (except an amount that may be collected or withheld under, or because the assignor does not comply with, the contract), taxes, social security contributions, or withholding or failing to withhold taxes or social security contributions, arising from, or independent of, the contract.
- (e)(1) An assignee under this section does not have to make restitution of, refund, or repay the amount received because of the liability of the assignor to the Government that arises from or is independent of the contract.
 (2) The Government may not collect or reclaim money paid to a person receiving an amount under an assignment or allotment of pay or allowances authorized by law when liability may exist because of the death of the person making the assignment or allotment.
- (Sept. 13, 1982, P. L. 97-258, § 1, 96 Stat. 976.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
3727(a)	31:203 (1st par. words before 9th comma)	R.S. §-3477; May 27, 1908, ch 206 (last par. on p. 411), 35 Stat. 411; Oct. 9, 1940, ch 779, § 1 (related to § 3477), 54 Stat. 1029; May 15, 1951, ch 75, § 1 (related to § 1 related to § 3477), 65 Stat. 41.
3727(b)	31:203 (1st par. words after 9th comma, 3d, last pars.).	
3727(c)	31:203 (2d par.).	
3727(d)	31:203 (5th par.).	
3727(e)(1)	31:203 (4th par.).	
3727(e)(2)	31:239.	Aug. 10, 1956, ch 1041, § 45, 70A Stat. 638.

In subsection (a)(1), the words "or share thereof" and "whether absolute or conditional, and whatever may be the consideration therefor" are omitted as surplus. In clause (2), the word "authorization" is substituted for "powers of attorney, orders, or other authorities" to eliminate unnecessary words.

In subsections (b) and (c), the word "official" is substituted for "officer" for consistency in the revised title and with other titles of the Code.

In subsection (b), the words "Except as hereinafter provided" are omitted as unnecessary. The words "read and" are omitted as surplus. The words "to the person acknowledging the same" are omitted as unnecessary. The text of 31:203 (1st par. last sentence) is omitted as superseded by 39:410. The words "Notwithstanding any law to the contrary governing the valid-



(<https://www.cornell.edu>)Cornell University Law School (<http://www.lawschool.cornell.edu/>)Search Cornell
(<https://www.cornell.edu/search/>)

CFR (/cfr/text) › Title 26 (/cfr/text/26) › Chapter I
(/cfr/text/26/chapter-I) › Subchapter H
(/cfr/text/26/chapter-I/subchapter-H) › Part 601 (/cfr/text/26/part-601) › Subpart E (/cfr/text/26/part-601/subpart-E) › Section
601.506

26 CFR 601.506 - Notices to be given to recognized representative; direct contact with taxpayer; delivery of a check drawn on the United States Treasury to recognized representative.

CFR (/cfr/text/26/601.506?qt-cfr_tabs=0#qt-cfr_tabs)

eCFR (/cfr/text/26/601.506?qt-cfr_tabs=1#qt-cfr_tabs)

Authorities (U.S. Code) (/cfr/text/26/601.506?qt-cfr_tabs=2#qt-cfr_tabs)

prev (/cfr/text/26/601.505) | next (/cfr/text/26/601.507)

§ 601.506 Notices to be given to recognized representative; direct contact with taxpayer; delivery of a check drawn on the United States Treasury to recognized representative.

(a) **General.** Any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Internal Revenue Service must be given to the taxpayer and, unless restricted by the taxpayer, to the representative according to the following procedures—

(1) If the taxpayer designates more than one recognized representative to receive notices and other written communications, it will be the practice of the Internal Revenue Service to give copies of such to two (but not more than two) individuals so designated.

(2) In a case in which the taxpayer does not designate which recognized representative is to receive notices, it will be the practice of the Internal Revenue Service to give notices and other communications to the first recognized representative appointed on the power of attorney.

CFR Toolbox

Income Tax: Overview from Wex
(/wex/income_tax)

View eCFR

(<http://www.ecfr.gov/cgi-bin/text-idx?>

c=ecfr&tpl=/ecfrbrowse/Title26/26cfr601_

Table of Popular Names (/topn)

Parallel Table of Authorities (/ptoa)

Power of Attorney Form

Edit, Download and I
for Free. Free Durab
Power of Attorney Fc

○ ○

Stay Involved

- LII Announce Blog
(<http://blog.law.cornell.edu>)
- LII Supreme Court Bulletin
(<https://www.law.cornell.edu/supcl>)
- Make a donation
(<http://www.law.cornell.edu/donors>)
- Contribute content
(<http://www.law.cornell.edu/wex>)
- Become a sponsor
(<http://www.law.cornell.edu/lii/busi>)
- Give feedback
(<http://www.law.cornell.edu/contac>)

- (3) Failure to give notice or other written communication to the recognized representative of a taxpayer will not affect the validity of any notice or other written communication delivered to a taxpayer.

Unless otherwise indicated in the document, a power of attorney other than form 2848 will be presumed to grant the authority to receive notices or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter(s) before the Internal Revenue Service to which the power of attorney pertains.

(b) Cases where taxpayer may be contacted directly. Where a recognized representative has unreasonably delayed or hindered an examination, collection or investigation by failing to furnish, after repeated request, nonprivileged information necessary to the examination, collection or investigation, the Internal Revenue Service employee conducting the examination, collection or investigation may request the permission of his/her immediate supervisor to contact the taxpayer directly for such information.

(1) Procedure. If such permission is granted, the case file will be documented with sufficient facts to show how the examination, collection or investigation was being delayed or hindered. Written notice of such permission, briefly stating the reason why it was granted, will be given to both the recognized representative and the taxpayer together with a request of the taxpayer to supply such nonprivileged information. (See 7521(c) of the Internal Revenue Code and the regulations thereunder.)

(2) Effect of direct notification. Permission to by-pass a recognized representative and contact a taxpayer directly does not automatically disqualify an individual to act as the recognized representative of a taxpayer in a matter. However, such information may be referred to the Director of Practice for possible disciplinary proceedings under Circular No. 230, 31 CFR part 10 (/cfr/text/31/10).

(c) Delivery of a check drawn on the United States Treasury

(1) General. A check drawn on the United States Treasury (e.g., a check in payment of refund of internal revenue taxes, penalties, or interest, see § 601.504(a)(5) (/cfr/text/26/601.504#a_5)) will be mailed to the recognized representative of a taxpayer provided that a power of attorney is filed containing specific authorization for this to be done.

(2) Address of recognized representative. The check will be mailed to the address of the recognized representative listed on the power of attorney unless such recognized representative notifies the Internal Revenue Service in writing that his/her mailing address has been changed.

(3) Authorization of more than one recognized representative. In the event a power of attorney authorizes more than one recognized representative to receive a check on the taxpayer's behalf, and such representatives have different addresses, the Internal Revenue Service will mail the check directly to the taxpayer, unless a statement (signed by all of the recognized representatives

Free Power of Attorney

Free to Print, Save & Download! Power of Attorney Form. All S

o o

Find a Lawyer

Lawyers

near Dayton, Ohio

Lawyers: get listed for free!

(<https://lawyers.justia.com/signup?ref=cornell>)



(<https://lawyers.law.cornell.edu/lawyer/trballard-tangeman-esq-474778>)

Tracey Ballard Tangeman Esq

(<https://lawyers.law.cornell.edu/lawyerballard-tangeman-esq-474778>)

Criminal Law

Dayton, OH

claimed Badge



(<https://lawyers.law.cornell.edu/lawyer/franthonymalocu-esq-485775>)

Frank Anthony Malocu Esq

(<https://lawyers.law.cornell.edu/lawyeranthonymalocu-esq-485775>)

Criminal Law, Divorce, DUI & DWI,

Family Law, White Collar Crime

Dayton, OH

gold Badge



(<https://lawyers.law.cornell.edu/lawyer/apaulhartley-1495097>)

so authorized) is submitted which indicates the address to which the check is to be mailed.

(4) Cases in litigation. The provisions of § 601.506(c) (/cfr/text/26/601.506#c) concerning the issuance of a tax refund do not apply to the issuance of a check in payment of claims which have been either reduced to judgment or settled in the course (or as a result) of litigation.

(d) Centralized Authorization File (CAF) system

(1) Information recorded onto the CAF system. Information from both powers of attorney and tax information authorizations is recorded onto the CAF system. Such information enables Internal Revenue Service personnel who do not have access to the actual power of attorney or tax information authorizations to—

- (i) Determine whether a recognized representative or an appointee is authorized by a taxpayer to receive and/or inspect confidential tax information;
- (ii) Determine, in the case of a recognized representative, whether that representative is authorized to perform the acts set forth in § 601.504(a); and
- (iii) Send copies of computer generated notices and communications to an appointee or recognized representative so authorized by the taxpayer.

(2) CAF number. A Centralized Authorization File (CAF) number generally will be issued to—

- (i) A recognized representative who files a power of attorney and a written declaration of representative; or
- (ii) An appointee authorized under a tax information authorization.

The issuance of a CAF number does not indicate that a person is either recognized or authorized to practice before the Internal Revenue Service. Such determination is made under the provisions of Circular No. 230, 31 CFR part 10 (/cfr/text/31/10). The purpose of the CAF number is to facilitate the processing of a power of attorney or a tax information authorization submitted by a recognized representative or an appointee. A recognized representative or an appointee should include the same CAF number on every power of attorney or tax information authorization filed. However, because the CAF number is not a substantive requirement (i.e., as listed in § 601.503(a) (/cfr/text/26/601.503#a)), a tax information authorization or power of attorney which does not include such number will not be rejected based on the absence of a CAF number.

(3) Tax matters recorded on CAF. Although a power of attorney or tax information authorization may be filed in all matters under the jurisdiction of the Internal Revenue Service, only those documents which meet each of the following criteria will be recorded onto the CAF system—

- (i) **Specific tax period.** Only documents which concern a matter(s) relating to a specific tax period will be recorded onto

Aaron Paul Hartley
(<https://lawyers.law.cornell.edu/lawye/paul-hartley-1495097>)

Criminal Law, Divorce, Domestic Violence, DUI & DWI, Family Law, Juvenile Law
Kettering, OH
gold Badge



(<https://lawyers.law.cornell.edu/lawyer/antony-abboud-esq-473565>)

Antony Abboud Esq
(<https://lawyers.law.cornell.edu/lawye/abboud-esq-473565>)

Criminal Law, DUI & DWI, Personal Injury
Dayton, OH
gold Badge



(<https://lawyers.law.cornell.edu/lawyer/nicholas-george-gounaris-esq-484903>)

Nicholas George Gounaris Esq
(<https://lawyers.law.cornell.edu/lawye/george-gounaris-esq-484903>)

Criminal Law, DUI & DWI, Insurance Claims, Nursing Home Abuse & Neglect, Personal Injury
Dayton, OH
gold Badge

See More Lawyers

(<http://lawyers.law.cornell.edu/lawyers/of>)
All lawyers

(<http://lawyers.law.cornell.edu/lawyers/lo>)

the CAF system. A power of attorney or tax information authorization filed in a matter unrelated to a specific period (e.g., the 100% penalty for failure to pay over withholding taxes imposed by section 6672 of the Internal Revenue Code, applications for an employer identification number, and requests for a private letter ruling request pertaining to a proposed transaction) cannot be recorded onto the CAF system.

(ii) **Future three-year limitation.** Only documents which concern a tax period that ends no later than three years after the date on a power of attorney is received by the Internal Revenue Service will be recorded onto the CAF system. For example, a power of attorney received by the Internal Revenue Service on August 1, 1990, which indicates that the authorization applies to form 941 for the quarters ended December 31, 1990 through December 31, 2000, will be recorded onto the CAF system for the applicable tax periods which end no later than July 31, 1993 (i.e., three years after the date of receipt by the Internal Revenue Service).

(iii) **Documents for prior tax periods.** Documents which concern any tax period which has ended prior to the date on which a power of attorney is received by the Internal Revenue Service will be recorded onto the CAF system provided that matters concerning such years are under consideration by the Internal Revenue Service.

(iv) **Limitation on representatives recorded onto the CAF system.** No more than three representatives appointed under a power of attorney or three persons designated under a tax information authorization will be recorded onto the CAF system. If more than three representatives are appointed under a power of attorney or more than three persons designated under a tax information authorization, only the first three names will be recorded onto the CAF system.

The fact that a power of attorney or tax information authorization cannot be recorded onto the CAF system is not determinative of the (current or future) validity of such document. (For example, documents which concern tax periods that end more than three years from the date of receipt by the IRS are not invalid for the period(s) not recorded onto the CAF system, but can be resubmitted at a later date.)

[56 FR 24008, May 28, 1991]

Power of Attorney Forms

Edit, Download and Print for Free. Free Durable Power of Attorney Form

○ ○

About LII
(/lii/about/about_lii)

Contact us
(/lii/about/contact_us)

Advertise here (/lii/help_out/sponsor)

Help
(/lii/help)

Terms of use
(/lii/terms/documentation)

Privacy
(/lii/terms/privacy_policy)

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of October 29, 2015

Title 31 → Subtitle B → Chapter II → Subchapter A → Part 240 → §240.17

Title 31: Money and Finance: Treasury

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

§240.17 Powers of attorney.

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed in accordance with applicable State or Federal law after the issuance of the check and describing the check in full (check serial and symbol numbers, date of issue, amount, and name of payee).

(b) *General powers of attorney.* Checks may be negotiated under a general power of attorney executed, in accordance with applicable State or Federal law, in favor of a person for the following classes of payments:

(1) Payments for the redemption of currencies or for principal and/or interest on U.S. securities;

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(c); and

(3) Payments for goods and services.

(c) *Special powers of attorney.* Checks issued for classes of payments other than those specified in paragraph (b) of this section, such as a recurring benefit payment, may be negotiated under a special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person.

(d) *Durable special powers of attorney.* A durable special power of attorney is a special power of attorney that continues despite the principal's later incompetency, and is created by the principal's use of words explicitly stating such intent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, durable special powers of attorney are effective only during the six-month period following a determination that the named payee is incompetent.

(e) *Springing durable special powers of attorney.* A springing durable special power of attorney is similar to a durable power of attorney except that its terms do not become effective until the principal's subsequent incompetence. As with a durable special power of attorney, a springing durable special power of attorney is created by the principal's use of language explicitly stating that its terms become effective at such time as the principal is determined to be incompetent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a springing durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the springing durable special power of attorney is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, springing durable special powers of attorney are effective only during the six-month period following a determination that the named payee is incompetent.

(f) *Proof of authority.* Checks indorsed by an attorney-in-fact must include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: "John Jones by Paul Smith, attorney-in-fact for John Jones." Such checks when presented for payment by a financial institution, will be paid by Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(g) *Revocation of powers of attorney.* Notwithstanding any other law, for purposes of negotiating Treasury checks, all powers of attorney are deemed revoked by the death of the principal and may also be deemed revoked by notice from the principal to the parties known, or reasonably expected, to be acting on the power of attorney.

(h) *Optional use forms.* Optional use power of attorney forms are listed in the appendix to this part. These forms are available on the Fiscal Service website at: <http://www.fiscal.treasury.gov/checkclaims/regulations.html>.

**Power of Attorney
and Declaration of Representative**

► Information about Form 2848 and its instructions is at www.irs.gov/form2848.

OMB No. 1545-0150

For IRS Use Only

Received by:

Name _____

Telephone _____

Function _____

Date / /

Part I Power of Attorney

Caution: A separate Form 2848 must be completed for each taxpayer. Form 2848 will not be honored for any purpose other than representation before the IRS.

1 Taxpayer information. Taxpayer must sign and date this form on page 2, line 7.

Taxpayer name and address _____

Taxpayer identification number(s) _____

Daytime telephone number _____

Plan number (if applicable) _____

hereby appoints the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address _____

CAF No. _____

PTIN _____

Telephone No. _____

Fax No. _____

Check if to be sent copies of notices and communications ☐

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address _____

CAF No. _____

PTIN _____

Telephone No. _____

Fax No. _____

Check if to be sent copies of notices and communications ☐

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address _____

CAF No. _____

PTIN _____

Telephone No. _____

Fax No. _____

(Note. IRS sends notices and communications to only two representatives.)

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

Name and address _____

CAF No. _____

PTIN _____

Telephone No. _____

Fax No. _____

(Note. IRS sends notices and communications to only two representatives.)

Check if new: Address ☐ Telephone No. ☐ Fax No. ☐

to represent the taxpayer before the Internal Revenue Service and perform the following acts:

- 3 Acts authorized (you are required to complete this line 3).** With the exception of the acts described in line 5b, I authorize my representative(s) to receive and inspect my confidential tax information and to perform acts that I can perform with respect to the tax matters described below. For example, my representative(s) shall have the authority to sign any agreements, consents, or similar documents (see instructions for line 5a for authorizing a representative to sign a return).

Description of Matter (Income, Employment, Payroll, Excise, Estate, Gift, Whistleblower, Practitioner Discipline, PLR, FOIA, Civil Penalty, Sec. 5000A Shared Responsibility Payment, Sec. 4980H Shared Responsibility Payment, etc.) (see instructions)

Tax Form Number
(1040, 941, 720, etc.) (if applicable)

Year(s) or Period(s) (if applicable)
(see instructions)

- 4 Specific use not recorded on Centralized Authorization File (CAF).** If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific Use Not Recorded on CAF ☐

- 5a Additional acts authorized.** In addition to the acts listed on line 3 above, I authorize my representative(s) to perform the following acts (see instructions for line 5a for more information):

☐ Authorize disclosure to third parties; ☐ Substitute or add representative(s); ☐ Sign a return; _____

☐ Other acts authorized: _____

- b Specific acts not authorized.** My representative(s) is (are) not authorized to endorse or otherwise negotiate any check (including directing or accepting payment by any means, electronic or otherwise, into an account owned or controlled by the representative(s) or any firm or other entity with whom the representative(s) is (are) associated) issued by the government in respect of a federal tax liability.
List any specific deletions to the acts otherwise authorized in this power of attorney (see instructions for line 5b): _____

- 6 Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here ☐ **YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**

- 7 Signature of taxpayer.** If a tax matter concerns a year in which a joint return was filed, each spouse must file a separate power of attorney even if they are appointing the same representative(s). If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
► **IF NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THIS POWER OF ATTORNEY TO THE TAXPAYER.**

Signature

Date

Title (if applicable)

Print Name

Print name of taxpayer from line 1 if other than individual

Part II Declaration of Representative

Under penalties of perjury, by my signature below I declare that:

- I am not currently suspended or disbarred from practice before the Internal Revenue Service;
- I am subject to regulations contained in Circular 230 (31 CFR, Subtitle A, Part 10), as amended, governing practice before the Internal Revenue Service;
- I am authorized to represent the taxpayer identified in Part I for the matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent by the Internal Revenue Service per the requirements of Circular 230.
 - d Officer—a bona fide officer of the taxpayer organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (for example, spouse, parent, child, grandparent, grandchild, step-parent, step-child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Internal Revenue Service is limited by section 10.3(d) of Circular 230).
 - h Unenrolled Return Preparer—Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have prepared and signed the return. See Notice 2011-6 and *Special rules for registered tax return preparers and unenrolled return preparers* in the instructions (PTIN required for designation h).
 - i Registered Tax Return Preparer—registered as a tax return preparer under the requirements of section 10.4 of Circular 230. Your authority to practice before the Internal Revenue Service is limited. You must have been eligible to sign the return under examination and have prepared and signed the return. See Notice 2011-6 and *Special rules for registered tax return preparers and unenrolled return preparers* in the instructions (PTIN required for designation i).
 - k Student Attorney or CPA—receives permission to represent taxpayers before the IRS by virtue of his/her status as a law, business, or accounting student working in an LTC or STCP. See instructions for Part II for additional information and requirements.
 - r Enrolled Retirement Plan Agent—enrolled as a retirement plan agent under the requirements of Circular 230 (the authority to practice before the Internal Revenue Service is limited by section 10.3(e)).

► **IF THIS DECLARATION OF REPRESENTATIVE IS NOT COMPLETED, SIGNED, AND DATED, THE IRS WILL RETURN THE POWER OF ATTORNEY. REPRESENTATIVES MUST SIGN IN THE ORDER LISTED IN PART I, LINE 2. See the instructions for Part II.**

Note. For designations d-f, enter your title, position, or relationship to the taxpayer in the "Licensing jurisdiction" column. See the instructions for Part II for more information.

Designation— Insert above letter (a-r)	Licensing jurisdiction (state) or other licensing authority (if applicable)	Bar, license, certification, registration, or enrollment number (if applicable). See instructions for Part II for more information.	Signature	Date

General Power of Attorney

BY INDIVIDUAL FOR THE COLLECTION OF CERTAIN
CHECKS DRAWN ON THE UNITED STATES TREASURY

Know all by these Presents:

That the undersigned, _____, of _____
(address)

does hereby appoint _____, of _____
(address)

as his/her attorney to receive, endorse, and collect checks payable to the order of the undersigned, drawn on the United States Treasury, and to execute in the name and on behalf of the undersigned, all bonds, indemnities, applications, or other documents, which may be required by law or regulation to secure the issuance of substitutes for such checks, and to give full discharge for same, granting to said attorney full power of substitution and revocation, hereby ratifying and confirming all that said attorney, or his substitute, shall lawfully do or cause to be done by virtue hereof.

WITNESS the signature of the undersigned, this _____ day of _____, 20 ____

(Signature of grantor)

* Personally appeared before me the above-named _____
known or proved to me to be the same person who executed the foregoing instrument, and acknowledged to me that he executed the same as his free act and deed.

WITNESS my signature, official designation, and seal.

[IMPRESS SEAL HERE]

(Signature of attesting officer)

(Official designation)

Dated at _____, this _____ day of _____, 20 ____

My commission expires _____, 20 ____

IMPORTANT – Do not execute this instrument without first reading the instructions on the next page. Exact compliance with these instructions will avoid complications.

* See Instructions on next page – Paragraphs 2(a) and 2(b)

INSTRUCTIONS FOR FMS FORM 231 – READ CAREFULLY

See 31 CFR Part 240 for more information

- 1(a). This general power of attorney may be used for the endorsement and collection of checks drawn on the United States Treasury in payment of principal or interest on public debt obligations or obligations guaranteed by the United States, tax refunds and payment for goods and services.
- 1(b). This general power of attorney form should not be used by taxpayers and/or their representatives to authorize the Internal Revenue Service to mail tax refund checks to anyone other than the taxpayer. See 26 CFR 601.506(c).
- 1(c). For all other classes of payments (but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(c)), a specific power of attorney (FMS Form 232) is required; however, a special power of attorney (FMS Form 233) naming an attorney in fact, and reciting that it is not given to carry into effect an assignment of the right to receive the payment, either to the attorney in fact or to any other person, may also be used.
- 2(a). Where desirable or where required by foreign, state or local law this power of attorney should be acknowledged before a notary public or other officer authorized by law to administer oaths generally. If in a foreign country, the acknowledgment should be made before a United States diplomatic or consular representative. If such an officer is not available, it may be acknowledged before a notary or other officer authorized to administer oaths, but his official character and jurisdiction must be certified by a United States diplomatic or consular officer, under the seal of his office.
- 2(b). Where the power of attorney is acknowledged pursuant to paragraph 2(a), the seal of the attesting officer must always be impressed (or stamped) provided, however, that where acknowledgments before a notary public, or other officer authorized by law to administer oaths, are not thus authenticated by the official impression seal of such officer, the power should be accompanied by a certificate from the proper official showing that the officer was in commission on the date of the acknowledgment. The date when the officer's commission expires should appear in any event. If a certificate is furnished, such certificate should show the dates of the beginning and expiration of the officer's commission, and such period of commission should include the date of acknowledgment of the power.
- 2(c). Notwithstanding the foregoing, persons subject to military jurisdiction may acknowledge powers of attorney before officers specially designated for that purpose pursuant to law.
3. This power of attorney is revoked by the death or incompetence of the grantor and may also be revoked by notice from the grantor to the parties concerned. Notice of revocation to the Treasury will not ordinarily serve to revoke the power.
4. If it is desired that checks be mailed to the attorney instead of to the payee, formal notice of change in the post-office address, identifying the checks affected, should be forwarded to the administrative office that authorized issuance of the checks.
5. POWERS OF ATTORNEY NEED NOT BE FILED WITH THE UNITED STATES TREASURY.

See p. 7

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 1.1031(a)-1: Property held for productive use in trade or business or for investment; 1.1031(k)-1: Treatment of deferred exchanges.

Rev. Proc. 2003-39

SECTION 1. PURPOSE

This revenue procedure provides safe harbors with respect to programs involving ongoing exchanges of tangible personal property using a single intermediary, as described in section 3.02 of this revenue procedure (an "LKE Program").

SECTION 2. BACKGROUND

.01 Section 1031(a)(1) provides that no gain or loss is recognized on the exchange of property held for productive use in a trade or business or for investment ("relinquished property") if the property is exchanged solely for property of like kind that is to be held either for productive use in a trade or business or for investment ("replacement property").

.02 Section 1031(a)(3) provides that replacement property received by the taxpayer is not treated as like-kind property if it: (a) is not identified as property to be received in the exchange on or before the day that is 45 days after the date on which the taxpayer transfers the relinquished property (the "45-day identification period"); or (b) is received after the earlier of the date that is 180 days after the date on which the taxpayer transfers the relinquished property, or the due date (determined with regard to extensions) for the transferor's federal income tax return for the year in which the transfer of the relinquished property occurs.

.03 Section 1.1031(k)-1(a) defines a deferred exchange as an exchange in which, pursuant to an agreement, the taxpayer transfers relinquished property and subsequently receives replacement property. In order to constitute a deferred

exchange, the transaction must be an exchange (*i.e.*, a transfer of property for property, as distinguished from a transfer of property for money).

.04 Section 1.1031(k)-1(c)(1) provides that any replacement property that is received by the taxpayer before the end of the 45-day identification period will be treated in all events as identified before the end of the 45-day identification period.

- 2 -

.05 Section 1.1031(k)-1(f)(1) provides that if a taxpayer actually or constructively receives money or other property in the full amount of the consideration for the relinquished property before the taxpayer actually receives the replacement property, the transaction will constitute a sale and not a deferred exchange, even though the taxpayer may ultimately receive replacement property.

.06 Section 1.1031(k)-1(g) sets forth safe harbors involving a qualified escrow account, a qualified trust, or a qualified intermediary, the use of which will result in a determination that the taxpayer is not in actual or constructive receipt of money or other property for purposes of § 1031 and the regulations.

.07 Section 1.1031(k)-1(g)(4)(iii) requires that, for an intermediary to be a qualified intermediary, the intermediary must enter into a written "exchange" agreement with the taxpayer and, as required by the exchange agreement, acquire the relinquished property from the taxpayer, transfer the relinquished property, acquire the replacement property, and transfer the replacement property to the taxpayer.

.08 Section 1.1031(k)-1(g)(4)(iv) provides that the intermediary will be treated as acquiring or transferring property, as the case may be, if the intermediary (either on its own behalf or as the agent of any party to the transaction) enters into an agreement for the acquisition or transfer of property and, pursuant to that agreement, the property is transferred.

.09 Section 1.1031(k)-1(g)(4)(v) provides that an intermediary will be treated as entering into an agreement for the acquisition or transfer of property if the taxpayer's rights in the agreement are assigned to the intermediary, and the other parties to the acquisition or transfer agreement are notified in writing of the assignment on or before the date of the relevant transfer of property (the "Assignment Safe Harbor"). Under the Assignment Safe Harbor, there is no requirement that the taxpayer also assign or delegate its obligations arising under the agreement.

.10 Section 1.1031(k)-1(g)(6) provides that an agreement with an escrow holder, trustee or qualified intermediary must expressly limit the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held in the qualified escrow or trust or by the qualified intermediary.

.11 Sections 1.1031(k)-1(g)(3) and (4) provide that the application of the safe harbor requires that in the case of a qualified escrow account, a qualified trust, or a qualified intermediary, the escrow holder, trustee, or intermediary must not be a "disqualified person."

- 3 -

.12 Section 1.1031(k)-1(k)(2) provides that a person that is the agent of the taxpayer at the time of the transaction is a disqualified person. For this purpose, a person who has acted as the taxpayer's employee, attorney, accountant, investment banker or broker, or real estate agent or broker within the two-year period ending on the date of the transfer of the first of the relinquished properties is treated as an agent of the taxpayer at the time of the transaction. Solely for purposes of §1.1031-1(k)(2), performance of the following services will not be taken into account: (a) services for the taxpayer with respect to exchanges of property intended to qualify for nonrecognition of gain or loss under § 1031; and (b) routine financial, title insurance, escrow, or trust services for the taxpayer by a financial institution, title insurance company, or escrow company.

.13 The Service and Treasury Department have determined that it is in the best interest of sound tax administration to provide taxpayers with guidance regarding the qualification of LKE Programs under § 1031. Accordingly, this revenue procedure provides safe harbors that clarify the application of § 1031 and the regulations thereunder to LKE Programs.

SECTION 3. SCOPE AND DEFINITIONS

.01 *Exclusivity.* This revenue procedure provides safe harbors for certain aspects of the qualification under § 1031 of certain exchanges of property pursuant to LKE Programs. The principles set forth in sections 4 through 6 of this revenue procedure have no application to any federal income tax determinations other than determinations

that involve LKE Programs qualifying for one or more of the safe harbors. For a transaction to qualify under § 1031, it must also satisfy the requirements of § 1031 for which safe harbors are not provided in this revenue procedure (e.g., whether property involved in an exchange is considered like-kind property within the meaning of § 1031).

.02 LKE Program. For purposes of this revenue procedure, an "LKE Program" is an ongoing program involving multiple exchanges of 100 or more properties. Although LKE Programs may differ in various ways, an LKE Program must have all of the following characteristics:

(1) The taxpayer regularly and routinely enters into agreements to sell tangible personal property as well as agreements to buy tangible personal property;

- 4 -

(2) The taxpayer uses a single, unrelated intermediary to accomplish the exchanges in the LKE Program;

(3) The taxpayer and the intermediary enter into a written agreement ("master exchange agreement");

(4) The master exchange agreement expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of money or other property held by the intermediary as provided in § 1.1031(k)-1(g)(6);

(5) In the master exchange agreement, the taxpayer assigns to the intermediary the taxpayer's rights (but not necessarily its obligations) in some or all of its existing and future agreements to sell relinquished property and/or to purchase replacement property;

(6) The taxpayer provides written notice of the assignment to the other party to each existing and future agreement to sell relinquished property and/or to purchase replacement property;

(7) The taxpayer

(a) implements a process that identifies potential replacement property or properties before the end of the identification period for the relinquished property or group of relinquished properties of which it is disposing in each exchange,

(b) complies with the identification requirement by receiving replacement property or properties before the end of the 45-day identification period, or

(c) satisfies the identification requirements by a combination of the approaches in (a) and (b);

(8) The taxpayer implements a process for collecting, holding and disbursing funds (which may include the use of joint taxpayer and intermediary bank accounts, or

accounts in the name of a third party for the benefit of both the taxpayer and the intermediary) that ensures that the intermediary controls the receipt, holding, and disbursement of all funds to which the intermediary is entitled (*i.e.*, proceeds from the sale of relinquished properties);

(9) Relinquished property or properties that are transferred are matched with replacement property or properties that are received in order to determine the gain, if any, recognized on the disposition of the relinquished property and to determine the basis of the replacement property; and

(10) The taxpayer recognizes gain or loss on the disposition of relinquished properties that are not matched with replacement properties, and the taxpayer takes a cost basis in replacement properties that are received but not matched with relinquished properties.

- 5 -

A taxpayer may conduct more than one LKE Program simultaneously. In such a case, each LKE Program is evaluated separately for purposes of determining whether that LKE Program qualifies for the safe harbors of this revenue procedure.

.03 No Inference. The Service recognizes that exchanges of property pursuant to LKE Programs may qualify for nonrecognition treatment under § 1031 although they fall outside the safe harbors provided in this revenue procedure. No inference is intended with respect to the federal income tax treatment of transfers of relinquished property and acquisitions of replacement property that do not satisfy the terms of the safe harbors provided in this revenue procedure.

.04 Scope of Safe Harbors. Each of the paragraphs under sections 4, 5, and 6 of this revenue procedure is considered a separate and distinct safe harbor. Therefore, a taxpayer who fails to qualify for the benefits of one safe harbor may nevertheless qualify for the benefits of another safe harbor.

SECTION 4. EXCHANGES OF RELINQUISHED PROPERTY AND REPLACEMENT PROPERTY

.01 Separate and Distinct Exchanges. In the case of an LKE Program, the taxpayer's transfer of each relinquished property or group of relinquished properties and the taxpayer's corresponding receipt of each replacement property or group of replacement properties with which the relinquished property or group of relinquished properties has been matched by the taxpayer is treated as a separate and distinct exchange for

purposes of § 1031. The determination of whether a particular exchange qualifies under § 1031 is made without regard to any other exchange. Thus, if a particular exchange of a relinquished property or group of relinquished properties for a replacement property or group of replacement properties pursuant to an LKE Program fails to qualify under § 1031, such failure will not affect the application of § 1031 to any other exchange pursuant to the LKE Program.

.02 45-day Identification Period. Replacement property that is received within the 45-day identification period or that is otherwise properly identified as provided in § 1.1031(k)-1(c) is treated as satisfying the requirement of § 1031(a)(3) that replacement property be identified, notwithstanding that it may not be matched with relinquished property until after the end of the 45-day identification period. The replacement property

- 6 -

must, however, be matched no later than the due date (determined with regard to extensions) of the taxpayer's return.

SECTION 5. ACTUAL OR CONSTRUCTIVE RECEIPT OF MONEY OR OTHER PROPERTY. For purposes of this section, any requirement that the taxpayer transfer money or other property to the qualified intermediary will be deemed to be satisfied if the amount of money held by the qualified intermediary and the amount of money in any joint account (as described in § 5.02 of this revenue procedure) equals or exceeds the amount of proceeds from the sale of relinquished property (including the amount that is required to be transferred by the taxpayer) that has not yet been used to acquire replacement property.

.01 Receipt of Checks and Other Negotiable Instruments. A taxpayer engaged in an LKE Program will not be considered to be in actual or constructive receipt of money or other property as a result of processing a check or other negotiable instrument made payable to a person other than the taxpayer if:

- (1) The check or other negotiable instrument has not been endorsed by the person to whom the check or other negotiable instrument is made payable;
- (2) The person to whom the check or other negotiable instrument is made payable is not a disqualified person as defined in § 1.1031(k)-1(k); and
- (3) The check or other negotiable instrument is forwarded to or for the benefit of a

qualified intermediary or deposited into an account in the name of the qualified intermediary, a joint account, or an account in the name of a third party (other than a disqualified person as defined in § 1.1031(k)-1(k)) for the benefit of both the taxpayer and the qualified intermediary.

.02 Joint Accounts. A taxpayer engaged in an LKE Program will not be considered to be in actual or constructive receipt of proceeds from the sale of relinquished property deposited into or held in a joint bank, trust, escrow, or similar account in the name of the taxpayer and the qualified intermediary, or in an account in the name of a third party (other than a disqualified person as defined in § 1.1031(k)-1(k)) for the benefit of both the taxpayer and the qualified intermediary, if:

- 7 -

(1) The account is used to collect, hold, and/or disburse proceeds arising from the sale of relinquished property for the benefit of the qualified intermediary;

(2) The agreement setting forth the terms and conditions with respect to the account requires authorization from the qualified intermediary to transfer proceeds from the sale of relinquished properties out of the account; and

(3) The agreement setting forth the terms of the taxpayer's and qualified intermediary's rights with respect to, or beneficial interest in, the account expressly limits the taxpayer's rights to receive, pledge, borrow, or otherwise obtain the benefits of proceeds from the sale of relinquished property held in the joint account as provided in § 1.1031(k)-1(g)(6).

The account may also be used by the parties for other purposes provided that such use does not undermine the qualified intermediary's right to control the proceeds from the sale of relinquished property.

.03 Funds Netting. A taxpayer engaged in an LKE Program will not be considered to be in actual or constructive receipt of money or other property as a result of transferring relinquished property solely because an amount owed by the taxpayer to the buyer (other than a lease security deposit) is netted against the sales price of the relinquished property, provided that, as required by the master exchange agreement, funds equal to the full amount of sales proceeds from the relinquished property are transferred to or for

the benefit of the qualified intermediary by the opening of the next day's business. Likewise, a taxpayer acquiring replacement property in a like-kind exchange will not be considered to be in actual or constructive receipt of money or other property solely because an amount owed by the seller to the taxpayer is netted against the purchase price of the property and the qualified intermediary transfers to the taxpayer funds in an amount equal to the amount owed by the seller to the taxpayer so that the qualified intermediary expends the full amount of the purchase price obligation for the replacement property.

.04 Taxpayer As Lender to Purchaser. If a taxpayer that is engaged in an LKE Program lends money to the buyer for the purchase of the taxpayer's relinquished property, the taxpayer's receipt of the buyer's promissory note or other evidence of indebtedness will not be considered actual or constructive receipt of money or other property if:

(1) The taxpayer makes similar loans in the ordinary course of its business operations;

- 8 -

(2) The buyer is not obligated to obtain financing from the taxpayer for the purchase of the relinquished property, but rather is free to borrow the funds from another lender;

(3) The taxpayer's loan to the buyer is an arm's-length transaction at the prevailing market terms; and

(4) As required by the master exchange agreement, the taxpayer promptly transfers funds equal to the loan proceeds (plus a market rate of interest on such amount for the period between the date of the sale of the relinquished property and the date of the transfer of the loan proceeds to the qualified intermediary) to or for the benefit of the qualified intermediary.

05. Application of Lease Security Deposit To Purchase Price. In the case of a taxpayer that engages in an LKE Program and is the lessor of the property being purchased by the buyer-lessee, the buyer-lessee's application of its lease security deposit to the purchase price of the relinquished property will not be considered actual or constructive receipt of money or other property provided that, as required by the master exchange agreement, the taxpayer promptly transfers funds equal to the lease

security deposit (plus a market rate of interest on such amount for the period between the date of the sale of the relinquished property and the date of the transfer of the security deposit to the qualified intermediary) to or for the benefit of the qualified intermediary.

SECTION 6. DEFINITION OF QUALIFIED INTERMEDIARY

.01 *In General.* For purposes of determining whether an intermediary is a disqualified person in the context of an LKE Program, the intermediary will not fail to be a qualified intermediary merely because the intermediary:

(1) is assigned the taxpayer's rights in its agreements to sell relinquished properties that ultimately are not matched with replacement properties under the taxpayer's LKE Program;

(2) is assigned the taxpayer's rights in its agreements to buy replacement properties that ultimately are not matched with relinquished properties under the taxpayer's LKE Program;

(3) receives funds with respect to the transfer of relinquished property that ultimately is not matched with replacement property under the taxpayer's LKE Program; or

- 9 -

(4) pays funds with respect to the acquisition of replacement property that ultimately is not matched with relinquished property under the taxpayer's LKE Program.

.02 *Assignment Safe Harbor.* The taxpayer's assignment in the master exchange agreement to the intermediary of the taxpayer's rights (but not necessarily its obligations) in some or all of its existing and future agreements to sell relinquished property and/or to purchase replacement property, and the taxpayer's written notice of the assignment to the other party to each agreement to sell relinquished property and/or to purchase replacement property on or before the date of the relevant transfer of property, will be effective to satisfy the Assignment Safe Harbor and notice requirement under § 1.1031(k)-1(g)(4)(v).

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information contained in this revenue procedure have been

reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1834.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in this revenue procedure are in sections 5 and 6. This information is required by the Service to provide safe harbors under § 1031 to taxpayers participating in LKE Programs for federal income tax purposes. The likely respondents are finance companies; subsidiaries of manufacturers; or banks that purchases retail leases and retail installment sale contracts from dealers of automobiles or other types of equipment.

The estimated total annual reporting and recordkeeping burden is 8,600 hours.

The estimated annual burden per respondent/recordkeeper varies from 45 minutes to 75 minutes, depending on individual circumstances, with an estimated average of 60 minutes. The estimated number of respondents and recordkeepers is 8,600.

The estimated annual frequency of responses is on occasion.

- 10 -

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

SECTION 8. DRAFTING INFORMATION

The principal author of this revenue procedure is Elizabeth Kaye of the Office of Associate Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Ms. Kaye at (202) 622-4920 (not a toll-free call).